

WRITTEN TESTITMONY

OF

**CHARLES W. MCKEE
DIRECTOR of GOVERNMENT AFFAIRS
SPRINT NEXTEL CORPORATION**

ON

TELEPHONE PHANTOM TRAFFIC ISSUES

**BEFORE THE
SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION**

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Good afternoon Chairman Inouye and members of the Committee. It is a privilege to be here today. Thank you for this opportunity to discuss Sprint Nextel Corporation's perspective on proposed legislation addressing the question of network traffic identification or "Phantom Traffic."

In my testimony today, I will outline Sprint's understanding of the term Phantom Traffic, the significance of this issue to Sprint and the potential consequences of this legislation. Sprint does not condone fraudulent activities of any kind, nor does it support activities designed to avoid legitimate compensation obligations. Sprint does not believe, however, that there is a significant volume of telecommunications traffic that falls within these categories and does not believe legislation in this area is necessary at this time. On the contrary, Sprint believes that most disputes regarding "Phantom Traffic" are a result of inherent limitations of the existing Public Switched Telephone Network and ambiguity regarding the legal status of various types of telecommunications traffic.

While Sprint questions whether this specific issue warrants legislative action, it applauds the narrow and focused nature of this proposed bill. Given the complex questions that surround the payments exchanged between telephone companies, it is important that any legislation in this area be carefully crafted to avoid unintended consequences. This legislation is appropriately limited and appears designed to avoid these unintended consequences. Ultimately, however, Congress or the FCC must come

to terms with the broader issues of intercarrier compensation that are not addressed here. Reform of this broken system is critical to sustaining robust competition in the telecommunications industry.

The Meaning of Phantom Traffic

Under current FCC rules, telecommunications carriers can impose charges on one another when they exchange telecommunications traffic. These charges vary based upon the type of carrier, the location of the callers, the manner in which the traffic is exchanged and the format or protocol of the traffic. There are at least nine different classifications of rates between carriers. The rules governing these charges are now very complex, and I will not attempt to outline or explain them in this testimony. For purposes of this proceeding, it is sufficient to state that these charges can only be assessed if the carrier receiving a call from the Public Switched Telephone Network is able to identify the carrier responsible for payment and the appropriate rate to be applied.

Phantom Traffic is not a term defined within the Communications Act or the FCC's rules and has been used by different parties to refer to different issues. Accordingly, the term itself is somewhat ambiguous in nature. As Sprint understands the issue, however, "Phantom Traffic" describes telecommunications traffic that either lacks sufficient information to identify the carrier responsible for payment or which lacks sufficient information to determine the rate to be applied to the traffic. This lack of information can be the result of many different causes, from the type of network used to transmit traffic, to disputes over the legal status of the traffic exchanged.

The Significance of the Issue

While there are significant disputes over which rates apply and which carriers are responsible for payment in various scenarios, almost all carriers recognize that traffic must be identified so that a billing carrier knows where to send its invoices and the rate to apply. This identification can occur in different ways. Most commonly, carriers use information provided during the transmission of the call using a special signaling protocol. This signaling information provides, among other things, the calling party number, the called party number and, depending on the type of call, the charge number (“CN”). (It is this network that enabled caller ID, for example). Information for billing can also be provided after the call is completed through the exchange of records between companies. These records frequently identify the responsible party based upon the trunk group originating the traffic. In yet other situations, companies may negotiate payment factors based on traffic studies that are used to generate invoices based on the total volume of traffic (as opposed to call-by-call records).

Despite the sinister label, the vast majority of “phantom traffic” is not the result of intentionally wrongful or nefarious conduct. Rather the lack of identifying information or the lack of sufficient information to determine a call’s jurisdiction (or rate) is most frequently the result of the current architecture of the Public Switched Telephone Network, regulatory ambiguity regarding the appropriate rating and routing of particular types of traffic, and the creation of new services, such as Voice over Internet Protocol (VoIP), that do not fit neatly within the current rules.

For example, under current rules, the jurisdiction or rate to be applied to a call depends, in part, on the location of the calling and called party. In the traditional wireline

network, the location of a party was generally determined by their phone number, which was associated with a fixed address. With the advent of mobile phones, however, the location of a caller can no longer be determined merely on the phone number used. A call from a New York mobile telephone to a traditional Kansas City telephone will appear identical from the perspective of the landline network, whether the caller was in either New York or Kansas City. Likewise, new voice applications using internet protocol can be initiated on any broadband connection and may not have a single fixed location.

In Sprint's experience, however, the amount of traffic that cannot be identified through any of the means I previously mentioned is relatively small. Wireless carriers, for example, frequently negotiate traffic factors to account for the issue of mobility. These factors require wireless carriers to pay higher rates on a proportion of the traffic exchanged with other carriers on the assumption that some percentage of the calls exchanged were in a different jurisdiction and thus subject to a different rate. These factors are established based upon traffic studies that review data over a period of days or months rather than call-by-call signaling information. Although it is not always reliable to determine the location of a wireless caller based only on the called and calling numbers, the reality is that most carriers have found appropriate means to measure and identify this traffic, and are meeting their payment obligations.

Consequences of the Legislation

Sprint currently identifies all traffic it originates on the Public Switched Telephone Network and accordingly does not object to the imposition of such an obligation on other providers of voice communications. Indeed, Sprint agrees that providers of voice communication should not be permitted to affirmatively disguise their

voice traffic or otherwise take steps to avoid a legal obligation to compensate the carriers with whom they exchange traffic.

Sprint notes, however, that the issue of traffic identification is closely related to the broader issue of intercarrier compensation. Indeed, the only reason to measure traffic in this way is in order to impose charges. Given the complexity of that subject, this legislation appropriately avoids attempting to restructure the current rules. The issue of intercarrier compensation reform has been the subject of thousands of pleadings and years of debate. Legislation which purports to address the relatively narrow issue of “Phantom Traffic” or traffic identification should appropriately avoid addressing these larger questions. Indeed, Sprint would encourage the Senate to clarify that this legislation is not intended to modify the current intercarrier compensation rules.

Specifically, the legislation should expressly acknowledge that it is not establishing a new rule that called and calling party numbers should always be used to determine the jurisdiction or rate applicable to a call for billing purposes. In this increasingly mobile world, the use of phone numbers to determine a caller’s location for intercarrier compensation is backward-looking and ignores the trends of wireless and Voice over Internet Protocol (“VoIP”) technology. Until Congress or the FCC are prepared to address all of the ramifications associated with changes in the manner in which calls are rated and routed, it should avoid any action that would further distort the current broken system.

Similarly, Sprint urges the Senate to ensure that the legislation does not require carriers to re-engineer their network architecture in an inefficient and costly manner. Specifically, the legislation should make explicit that these call identification obligations

do not require carriers to segregate different “types” of traffic onto separate facilities or require direct connectivity between carriers. Such measures are not necessary to address the issue of billing and could increase the cost of service to consumers. Sprint is concerned, however, that this legislation could be read to require inefficient trunking arrangements that would disrupt the existing network architecture, which currently allows carriers to combine traffic of different types or jurisdictions on the same facilities. While Sprint does not believe this is the intent of the legislation, we urge the Senate to carefully review the language in this context.

Future Reform

Once again, Sprint commends the Senate staff for crafting such narrow legislation. Sprint does not condone fraudulent efforts to mask a carrier’s identity or to avoid compensation obligations. Sprint, however, does not believe the specific issue of Phantom Traffic currently warrants legislation. While Sprint can support narrow legislation addressing traffic identification, we urge the Senate to avoid unintended changes to the already complex and dysfunctional intercarrier compensation regime.

Unfortunately, the issue of intercarrier compensation, including both switched and special access, is not one that can be avoided much longer if viable competition is to remain in the telecommunications market place. The distortions in the current system that heavily favor incumbent carriers and outdated technologies threaten to undermine the successes of the 1993 and 1996 revisions to the Telecommunications Act. Sprint strongly urges Congress to address these broader issues as soon as possible.